

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Philip & Amber Hertik)
Map 132-10-0, Parcel 41.00) Davidson County
Residential Property)
Tax Year 2005)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$377,900	\$2,907,800	\$3,285,700	\$821,425

An appeal has been filed on behalf of the property owners with the State Board of Equalization on September 7, 2005.

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated, §§ 67-5-1412, 67-5-1501 and 67-5-1505. A hearing was conducted on August 9, 2006 at the Davidson County Property Assessor's Office. Present at the hearing were Carla Chester, the agent for the homeowners, taxpayers Philip and Amber Hertik and Davidson County Property Assessor's representative, Jason Poling.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a single family residence located at 805 North Curtiswood Lane in Nashville, Tennessee.

The taxpayer's agent contends that the property is worth \$2,200,000 based on the median price per square foot.

The assessor contends that the property should be valued at \$3,285,000.

The presentation by the agent shows that she put in a lot of time and effort preparing for this hearing. The germane issue is the value of the property as of January 1, 2005.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that “[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values. . .”

After having reviewed all the evidence in this case, the administrative judge finds that the subject property should be valued at \$3,285,300 based upon the presumption of correctness attaching to the decision of the Davidson County Board of Equalization.

Since the taxpayer is appealing from the determination of the Davidson County Board of Equalization, the burden of proof is on the taxpayer. See State Board of

Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

With respect to the issue of market value, the administrative judge finds that Ms. Chester simply introduced insufficient evidence to affirmatively establish the market value of subject property as of January 1, 2005, the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a).

The administrative judge finds that rather than **averaging** the price per square foot, comparable sales should have been used, comparables must be adjusted. As explained by the Assessment Appeals Commission in *E.B. Kissell, Jr.* (Shelby County, Tax Years 1991 and 1992) as follows:

The best evidence of the present value of a residential property is generally sales of properties comparable to the subject, comparable in features relevant to value. Perfect comparability is not required, but relevant differences should be explained and accounted for by **reasonable adjustments**. If evidence of a sale is presented without the required analysis of comparability, it is difficult or impossible for us to use the sale as an indicator of value. . . .

Final Decision and Order at 2.

In analyzing the arguments of the taxpayer's agent, the administrative judge must also look to the applicable and acceptable standards in the industry when comparing the sales of similar properties as the taxpayer did here.

The administrative judge finds that the procedure normally utilized in the sales comparison approach has been summarized in one authoritative text as follows:

To apply the sales comparison approach, an appraiser follows a systematic procedure.

1. Research the competitive market for information on sales transactions, listings, and offers to purchase or sell involving properties that are similar to the subject property in terms of characteristics such as property type, date of sale, size, physical condition, location, and land use constraints. The goal is to find a set of comparable sales as similar as possible to the subject property.
2. Verify the information by confirming that the data obtained is factually accurate and that the transactions reflect arm's-length, market considerations. Verification may elicit additional information about the market.
3. Select relevant units of comparison (e.g., price per acre, price per square foot, price per front foot) and develop a comparative analysis for each unit. The goal here is to define and identify a unit of comparison that explains market behavior.
4. Look for differences between the comparable sale properties and the subject property using the elements of comparison. Then *adjust the price of each sale property to reflect how it differs from the subject property or eliminate that property as a comparable.*

This step typically involves using the most comparable sale properties and then adjusting for any remaining differences.

5. Reconcile the various value indications produced from the analysis of comparables into a single value indication or a range of values.

[Emphasis supplied]

Appraisal Institute, *The Appraisal of Real Estate* at 422 (12th ed. 2001). Andrew B. & Marjorie S. Kjellin, (Shelby County, Tax Year 2005).

The agent's analysis is also flawed in asking, "why would you pay 3.3 million for a 1997 home on Curtiswood Lane when you could purchase a newly constructed home on Tyne Boulevard for \$2,250,000 that contains approximately 1,500 additional square feet and is in a better location?" There is an old adage; there is no accounting for taste, or in this case, preference. The issue is not why her clients chose to purchase the home, but what was the fair market value as of January 1, 2005?

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2005:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$377,900	\$2,907,800	\$3,285,700	\$821,425

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

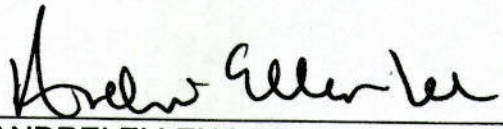
Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal "**must be filed within thirty (30) days from the date the initial decision is sent.**" Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal "**identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order**"; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 24th day of August, 2006.



ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Ms. Carla Chester
Jo Ann North, Assessor of Property